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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION THREE

In re AMPELIA P. and FAVIOLA P.,  
Persons Coming Under the Juvenile Court  
Law.

SOCIAL SERVICES AGENCY,  
  
Plaintiff and Respondent.

v.

ANGELICA P.,  
  
Defendant and Appellant.

A095509

(Marin County  
Super. Ct. Nos. JV21024A & JV21025A)

Angelica P. appeals the denial of her petition to set aside the juvenile court's finding that reasonable services had been offered to her, contending her therapist had violated relevant ethical standards. We find no abuse of discretion and affirm.

***Factual and Procedural Background***

Angelica's daughters, Ampelia P. and Faviola P., were 12 and 7 years old, respectively, when petitions were filed alleging, inter alia, that they had been sexually abused by their father. After a contested jurisdictional hearing, the petitions were sustained in November 1999. The dispositional report indicated the girls were doing well in foster care, but their mother could not believe her husband had molested their daughters. Angelica did not want to discuss a possible reunification plan until the

criminal proceedings against her husband were concluded, although the social worker had explained that she would not be able to reunify with her children “until she separates from her husband, believes and supports her daughters, and demonstrates that she can protect them from further abuse.” The social worker also reported: “This is very hard for [Angelica] to hear, and she might never be willing, or able, to face this reality. She has no support in the area and totally depends on her husband for her own survival.” The girls’ father adamantly denied their allegations; his criminal prosecution was pending.

In December 1999, the court removed the girls from their parents’ custody and adopted the reunification plan proposed by the Department of Social Services (the Department). In the report submitted for the 6-month review hearing, the social worker stated that Angelica continued to believe in her husband’s innocence, and was unwilling to separate from him. Angelica also loved her daughters and wanted them to return to live with her. Individual counseling was unavailing. Angelica did not believe her daughters had been molested. “[B]oth girls fe[lt] abandoned by their mother” and did not wish to extend their visits with her. The objectives of the service plan had not been met.

The CASA report indicated the girls seemed generally happy with their current foster home placement, but their therapists reported that they “continue to suffer from their mother’s inability to protect them, as she continues in her denial of the possibility the girls were victimized by their father.” The therapists reported that “the girls are in a great deal of emotional pain over the fact their mother, still to this day, does not believe them.” The girls’ therapists did not believe they should be returned to their mother “unless she separates from their father and obtains the support she needs to protect the girls.” Ampelia had told the CASA worker she did not want to go back to the ranch where her parents lived, while Faviola wasn’t sure. Angelica had failed to meet the objectives of the service plan, continuing to deny the abuse had occurred, almost a year after the girls were removed from the family home.

The criminal charges against the girls’ father were dismissed after the court declared a hung jury. The girls’ therapists wrote to the social worker, strongly opposing their return to the home of their parents. The court found that reasonable services had

been provided, but the parents had not made substantial progress in alleviating the conditions that led to the girls' removal. In September 2000, Ampelia was moved on an emergency basis to a new foster home, although the Department continued to seek a permanent home where both girls could be placed together.

In the 12-month review report, the social worker reported that Angelica continued to believe her husband was innocent, and did not believe her daughters had told the truth. Angelica continued to participate in individual counseling with Yadira Vigil, but had refused antidepressant medication recommended by Community Mental Health. Vigil reported that Angelica understood the girls could not go home as long as she continued to live with her husband, but was unable to separate from him because of her dependence on him.

The girls' father continued to deny the molestation. Both girls had been re-traumatized by being subpoenaed to testify in the criminal proceedings against him. Angelica testified contrary to her daughters at both the jurisdictional hearing and during the criminal proceedings against their father. The girls enjoyed their visits with their mother and siblings, but did not wish to extend them, and continued to request that they be supervised. Both girls did not want to return to live with their mother as long as their father remained in the home. Neither parent had addressed the sexual abuse issue that had caused the girls' removal. The social worker concluded that the provision of further services would not result in successful reunification because of the parents' denial. The Department recommended reunification services be terminated and a permanent plan hearing be scheduled.

The CASA worker also reported: "The parents continue to deny the girls were victims of abuse, maintaining the girls['] allegations are lies prompted by Ampelia's unhappiness with ordinary parental rules and restrictions." The girls wished to visit their mother, but did not want to live with her and their father. Angelica had made "no observable progress" toward the service plan goals of overcoming her denial of the molestation and demonstrating her ability to protect the girls. There was "no indication that continuation of services will lead to [the] necessary changes." The girls continued

“to suffer great emotional harm from their mother’s abandonment and rejection.” The CASA worker concluded it was in the girls’ best interest “to begin the process of bonding in a permanent home and to achieve a sense of stability in their lives.” She also recommended that reunification efforts be terminated.

An addendum to the social worker’s report indicated that on October 25, 2000, Angelica had met with both children’s therapists and Vigil in an effort to have Angelica “come to terms with the children’s experience and to engage [her] in the children’s healing process.” The social worker and CASA worker had also met with the parents but “[t]hese efforts did not change the mother’s or father’s perception of the problems, and both parents continue to deny that the sexual abuse took place.” Ampelia’s therapist thought it “unlikely that this mother will accept the truth, or understand her daughter’s feelings.” Faviola’s therapist reported that Angelica “continues to adamantly deny that her husband molested her daughters,” and “was no closer [to] accepting this reality.” Vigil reported that Angelica “continues to deny the reported facts regarding the sexual molestation of her two youngest daughters, despite my repeated efforts to educate her regarding child sexual abuse.” The therapist opined that Angelica “lacks the emotional capacity to even consider the possibility of the sexual abuse having occurred,” and was therefore “unable to provide adequate support for her two daughters.” Angelica had said she wished “to terminate therapy because she feels that it is no longer helpful.” As a result therapy was concluded on November 8, 2000.

The contested 12-month review hearing took place in December 2000. The social worker and the girls’ therapists testified and were cross-examined. The court found that reasonable services had been provided, but the parents had not made substantial progress “in ameliorating the conditions that led to the removal of the children.” The court ordered that reunification efforts be terminated because “there is no likelihood or substantial probability that the parents [will] admit to the molestation or complete the reunification plan with additional services within the remaining reunification time.” The court also found “[t]hat there is a preponderance of evidence that the children will suffer serious detriment, physical and emotional harm, if they [are] returned to the mother’s or

the father's custody at this time." The court ordered that an adoption assessment be prepared, and set the matter for a hearing pursuant to Welfare and Institutions Code section 366.26 in March 2001.<sup>1</sup> The parents were notified of their right to seek writ review, but did not do so.

The adoption assessment report stated that the girls liked to see their mother weekly for an hour's visit, and that their relationship with her was "comfortable, but not warm or intimate." They did not share their feelings with her. The girls had been placed together in their first foster home, and moved together to a second placement. When Ampelia's behavior became too difficult for the second foster family, she was moved to the home of Vigil, her mother's former therapist, in January 2001, where Faviola soon joined her. Vigil was their prospective adoptive parent/guardian; she had applied to become a licensed foster parent before she learned that the girls might need a permanent placement.<sup>2</sup> The adoption assessment noted: "[Ampelia and Faviola] were moved to this family as they needed a home where they could be together and have the potential for permanence." The girls had special needs related to their history of sexual molestation and lack of protection by their mother, and needed a parent with patience and understanding, as well as a stable family. They also needed to stay together "if at all possible."

The girls seemed to be adjusting "reasonably well," and Vigil was supportive of continuing their relationship with their mother and siblings.<sup>3</sup> Vigil's education, along with her professional and parenting experience, "put her in a good position to meet the children's special needs." Vigil was open to either guardianship or adoption, noting the girls did not seem ready to commit to adoption at that point. Ampelia had told the adoption worker she didn't think she wanted to be adopted, nor was Faviola ready to express such a desire. The girls agreed to request six months time to evaluate the

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<sup>1</sup> All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

<sup>2</sup> In fact, Vigil and her husband had applied for foster parent licensing by March 1999, before Vigil began therapy with Angelica. Vigil's single-parent foster care license was approved on October 19, 2000, after she was divorced.

possibility, and wanted to continue to visit their mother regularly. The girls' therapists also endorsed an ongoing relationship with their mother.

The adoption worker had spent several months searching fruitlessly for an appropriate adoptive or guardianship home for the girls, before locating Vigil. Because of their ages and special needs, including ongoing contact with their mother, there were very few appropriate families who could care for both girls together. The girls' relationship with Vigil was still new, and progressing slowly. All parties felt they needed more time to decide on a long-term plan. The adoption worker recommended that adoption be made the plan, with six months allowed for further assessment. In an addendum to the adoption assessment, the social worker reported that he had discussed the new permanent placement with Angelica on January 9, 2001. Angelica was very unhappy about the court process, but had not had any problems with visitation. The social worker assured her that the Department would continue to support her visitation with her daughters. On February 21, 2001, the social worker again spoke with Angelica, explaining the purpose of the next court hearing and the different possibilities for a permanent plan. The social worker reported that Angelica "seemed more accepting and asked me whether she could visit the girls at [Vigil's] home, the current placement. I told her that could be arranged."

The March 2001 CASA report also provided information about the placement with Vigil, noting that it "seems to be a very good match for the girls." Vigil "is a native Spanish speaker and is a licensed therapist who possesses many skills that can support them in this time of transition and beyond. The girls moved into her home over the winter break from school. Both girls continue to be enrolled in the same . . . public schools in which they were enrolled at the time of their removal from the family home." The girls continued in weekly therapy sessions, and saw their mother in weekly supervised visits. After attending one of the visits, the CASA worker reported that "[t]he girls and their mother were polite and quiet, appearing interested in what each had to say

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<sup>3</sup> The girls both liked Vigil, but complained that she was busy and they were sometimes bored.

and greeting and parting with little apparent emotion.” The parents continued to deny the girls were victims of abuse. The girls’ sense of abandonment by their mother continued to be “the single greatest issue for each [of them].”

The CASA worker noted the importance of providing stability for the girls, who had experienced multiple placements since being removed from the family home. She noted that the current placement with Vigil was relatively new, and bonding would not be expected to be an easy process in light of the girls’ experiences of abuse and abandonment. She recommended the girls be allowed sufficient time to develop a sense of emotional security, and continue their weekly supervised visits with their mother. At the March 2001 hearing, the court designated adoption as the permanent placement goal, but did not order termination of parental rights.

In April 2001, Angelica had also filed a section 388 petition asking the court to set aside the placement with Vigil. Her attorney’s declaration claimed Vigil had violated ethical standards by becoming the girls’ caretaker soon after terminating her therapeutic relationship with Angelica. Attached copies of the social worker’s log noted a meeting with Vigil and the adoption worker on November 16, 2000, reporting Vigil’s interest in providing a permanent home for the girls. Meetings were arranged, and the social worker agreed to inform their parents. The exhibits to Angelica’s section 388 petition also included a copy of a consumer complaint form she had filed with Vigil’s licensing board in March 2001.

In an addendum filed before the hearing on the section 388 petition, the Department changed its permanent plan recommendation from adoption to guardianship for both girls. Ampelia was “feeling very uncertain about any permanent plans,” and was having trouble with school and family relationships. Faviola continued “to have an overall positive adjustment in her placement,” despite certain conflicts with her sister. The social worker believed the girls were “good candidates for adoption,” but concluded that in light of Ampelia’s feelings, guardianship appeared more appropriate.

At the April 2001 hearing on Angelica’s section 388 petition, the court expressed its concern regarding the appearance of impropriety, and the potential violation of a trust

relationship, in Vigil's taking Angelica's children into her home after her role as Angelica's therapist in the proceedings which led to the termination of reunification efforts. The court stated: "It isn't that I think that Ms. Vigil had any inappropriate motives at any time, just the appearance here is wrong." The court was concerned about the procedural posture of the case,<sup>4</sup> and invited Angelica's counsel to seek reconsideration of the 12-month review order, based on new evidence. The section 388 petition was denied without prejudice, and the matter was continued.

In May 2001, Angelica filed another section 388 petition, seeking to modify the court's finding that reasonable services had been offered and the court's termination of reunification services. Angelica now alleged that "Vigil in fact did not provide therapy" to her because of Vigil's dual role as therapist and potential foster mother, which was not known to the court at the time of the 12-month hearing. Angelica sought an order for the provision of six more months of reunification services.<sup>5</sup> Angelica also filed a motion under Code of Civil Procedure section 473, requesting similar relief, and alleging that her attorney's failure to raise the issue at the contested 12-month review hearing was due to mistake or excusable neglect.<sup>6</sup>

The girls' counsel filed opposition, arguing that no change in circumstances or new evidence had been shown, and that Angelica had known about the proposed placement with Vigil before the 12-month review hearing.<sup>7</sup> Counsel objected to Angelica's waiting until more than three months later to raise an objection to the placement, causing the girls further emotional detriment, and argued that modification would not be in the girls' best interest. Counsel also pointed out that the requested

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<sup>4</sup> There was no court order approving the placement with Vigil.

<sup>5</sup> Angelica also requested the girls' removal from Vigil's home, and notice and an opportunity to be heard before any future changes of placement.

<sup>6</sup> Angelica's attorney at the time of the 12-month hearing had been replaced by new counsel in January 2001.

<sup>7</sup> Included as an exhibit with the opposition papers was a copy of the social worker's log dated November 27, 2000, showing that Angelica had been informed that Vigil was interested in providing for both girls. Angelica reportedly wanted the girls to return home, but continued to deny that they had been molested by their father.



removal order was moot, as Vigil had withdrawn as a prospective permanent caretaker and had asked the Department to find another suitable placement.<sup>8</sup> The Department also opposed Angelica's motions, contending that reasonable services had been provided and it would not be in the girls' best interest to extend further services to Angelica, who had continually denied that her daughters had been sexually abused by their father.<sup>9</sup>

Angelica called no witnesses and offered no additional evidence at the June 2001 hearing on her motions. All parties submitted on the briefs. After hearing argument, the court denied the motions. The court noted there was no suggestion that Vigil's loyalties had been divided during the bulk of her time as Angelica's therapist, and that at the time of the 12-month review, Vigil had been one of three therapists who opined that Angelica would not be able to overcome her denial of her daughters' molestation, which was the primary reason services were terminated. The court concluded it would not have made a difference in the outcome of the 12-month review hearing if the court had been informed that Vigil was a potential foster placement for the girls.<sup>10</sup>

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<sup>8</sup> As a consequence, the Department changed its permanent plan recommendation from guardianship to long-term foster care.

<sup>9</sup> A May 2001 memo from the social worker was attached as an exhibit, stating that on October 26, 2000, he had mentioned to Vigil that they were looking for a permanent home for the girls together. Vigil informed him that she was being licensed as a foster parent, and might be able to provide for the girls. Vigil had previously informed the social worker that Angelica wished to terminate therapy, and was told that no further discussion of the girls' placement could occur until therapy had been terminated. On November 14, 2000, the social worker received a letter from Vigil stating therapy had been terminated on November 8, 2000. The social worker tried to telephone Angelica several times, but was unable to contact her. He also visited her home without success. On November 27, he had a telephone conversation with Angelica, informing her that Vigil was interested in providing a permanent home for both girls if they were not returned home. Angelica did not object. The social worker also recalled mentioning informally to all the attorneys at the 12-month review hearing that Vigil was a potential placement; again, there was no objection. On January 9, 2001, Angelica reported no problems with the visits or placement. On February 21, 2001, Angelica told the social worker she thought the girls were happy with Vigil, and expressed a desire to see them in Vigil's home. While Angelica now suggests the opposing briefs and attached exhibits were not "actually admitted as evidence," she also acknowledges that "they were apparently considered by the [juvenile] court." We also note the briefs of both the Department and minors' counsel were stamped "filed" in the court below, and were discussed by counsel and the court during argument, without objection.

<sup>10</sup> The court also noted that the placement with Vigil was not an issue before the court at the 12-month review.

The court further found that Vi gil’s previously expressed professional opinion regarding Angelica’s inability to overcome her denial was not motivated by an unexpressed intention to become personally involved with the girls, and that there was additional evidence that Angelica would not benefit from six more months of services. The court noted that despite the lack of formal notice, Angelica was aware, and counsel “might consequently have been aware also of the fact that as of November, prior to the hearing, Ms. Vigil was a potential placement for the children . . . ,” noting the applicability of the principle of laches. The court also found no new or different evidence to justify a modification under section 388. Angelica filed a timely appeal.

### ***Discussion***

Angelica contends the juvenile court abused its discretion in denying her motions for relief. We disagree.

As Angelica recognizes, a petitioner filing a motion pursuant to section 388 has the burden of demonstrating by a preponderance of the evidence that changed circumstances and/or new evidence exist, which demonstrate that it would be in the best interests of the child for the petition to be granted, and the previous order modified. (Cal. Rules of Court, rule 1432, subds. (b), (f); *In re Marilyn H.* (1993) 5 Cal.4th 295, 309; *In re Kimberly F.* (1997) 56 Cal.App.4th 519, 526 & fn. 5.) “The petition is addressed to the sound discretion of the juvenile court and its decision will not be disturbed on appeal in the absence of a clear abuse of discretion. [Citations omitted.]” (*In re Jasmon O.* (1994) 8 Cal.4th 398, 415-416.) The denial of a motion for relief under Code of Civil Procedure section 473 is also reviewed for abuse of discretion. (*In re Marriage of Eben-King & King* (2000) 80 Cal.App.4th 92, 118; see also *In re Margarita D.* (1999) 72 Cal.App.4th 1288, 1294.)

In reviewing the denial of a section 388 petition, the court of appeal in *In re Kimberly F.*, *supra*, considered three factors. (56 Cal.App.4th at pp. 530-532.) The first factor is the seriousness of the reason for the initiation of the dependency and the reason for any continuation of that problem. Angelica concedes here that the sexual abuse of the children, and her denial of that abuse, “mitigated against a granting of the petition.” She

contends, however, that the remaining factors “mitigated in favor of the granting of the petition.” Not so. The second factor refers to the strength of the existing bond between the parent and child, as well as the strength of the child’s bond to her present caretaker. The evidence here showed that the girls enjoyed their weekly visits with their mother, but felt emotionally abandoned by her, and did not want to return to live with her unless she separated from their father, a step she was unwilling to take. The third factor refers to the nature of the change of circumstances, and the extent to which the problem may be easily ameliorated. Angelica places great emphasis on the alleged improprieties in Vigil’s conduct in becoming the girls’ foster parent so soon after the termination of her role as their mother’s therapist. In hindsight, the actions leading to the placement, although they may have been well-intentioned, appear ill-advised. As the trial court observed, “it’s unfortunate . . . that the conflict or apparent impropriety was not perceived before . . . [the girls] were placed with Ms. Vigil.” The outcome of the 12-month review, however, was based on Angelica’s continued failure to overcome her denial of the sexual abuse of her daughters by their father, as reported by every professional who had worked with the family since the girls had been removed from the family home. Thus, as the court below concluded, even if the facts regarding the potential placement with Vigil had been raised during the 12-month review hearing, the outcome would not have been different.

Angelica’s further claim that her therapy with Vigil was tainted, and that adequate services were therefore not provided, was not supported by the evidence, as noted by the juvenile court. Her suggestion that the Department hid information about the placement or misled the juvenile court is also not supported by the record. Angelica was not deprived of her right to be heard in a meaningful manner, and she concedes in her reply brief that the due process cases cited in her opening brief involved different facts and legal issues.

Nor was Angelica entitled to relief under Code of Civil Procedure section 473, even assuming *arguendo* that section is applicable in dependency proceedings, because she knew about the potential placement with Vigil before the 12-month review hearing. Moreover, as explained above, the potential placement was not the issue before the court

at the 12-month review hearing, and the result of that hearing would not have been different had the potential placement been made known to the court. The court did not abuse its discretion in denying Angelica's motions.

***Disposition***

The orders of the juvenile court are affirmed.

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Corrigan, J.

We concur:

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McGuinness, P.J.

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Parrilli, J.